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FILED
DISTRICT COURT OF GUAM

DEC 22 2006 *

MARY L.M. MORAN
CLERK OF COURT

5 DISTRICT COURT OF GUAM

6 TERRITORY OF GUAM
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8 JULIE BABAUTA SANTOS, *et al.*,
9

10 Petitioners,

11 -v-

12 FELIX P. CAMACHO, *et al.*

13 Respondents.

Civil Case No. 04-00006

**THE SANTOS AND TORRES
PARTIES' REPLY BRIEF
PURSUANT TO THE COURT'S
DECEMBER 7, 2006 ORDER**

14 CHARMAINE R. TORRES, *et al.*,
15

16 Plaintiffs,

17 -v-

18 GOVERNMENT OF GUAM, *et al.*,

19 Defendants.

Civil Case No. 04-00038

20 MARY GRACE SIMPAO, *et al.*,
21

22 Plaintiffs,

23 -v-

24 GOVERNMENT OF GUAM,

25 Defendant.

26 -v-

27 FELIX P. CAMACHO, Governor of Guam,
28

Intervenor-Defendant.

Civil Case No. 04-00049

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1 The *Santos* and *Torres* parties submit this reply brief pursuant to the Court's December 7,
2 2006 Order. With respect to the Governor and Government's brief, the *Santos* and *Torres* parties
3 maintain, as they did, that this Court has subject matter jurisdiction over the settlement class
4 members and the Settlement Agreement, that the statutes of limitation do not bar the settlement of
5 the claims as proposed, that Court consultation with the Mediator is not opposed, and that the
6 1997 and 1998 payouts are proper. The *Santos* and *Torres* parties request that preliminary
7 approval of the Settlement Agreement be granted, and the processes and procedures outlined in
8 the Settlement Agreement commence. Meanwhile, some of the positions advocated by the
9 *Simpao* plaintiffs require a response as follows.

11 **I. THE *SIMPAO* PLAINTIFFS LACK STANDING TO OBJECT TO**
12 **PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT.**

13 The *Simpao* plaintiffs are not parties to the Settlement Agreement. Consequently, they
14 lack standing to object to the Settlement Agreement preliminarily or finally. Accordingly, they
15 should not be permitted to thwart the class action settlement agreement procedures. Nonparties in
16 a class action lack standing to challenge approval of a class action settlement. *Gottlieb v. Wiles*,
17 11 F. 3d 1004, 1006 (10th Cir. 1993); *Guthrie v. Evans*, 815 F. 2d 626, 628 (11th Cir. 1987). In
18 this case, the *Simpao* case was ordered consolidated with the *Santos* and *Torres* cases for pretrial
19 purposes only. Since pretrial consolidation of suits does not merge suits into a single action or
20 change the rights of parties or make those who are parties in one suit parties in another, *Johnson*
21 *v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97, 53 S. Ct. 721, 77 L. Ed. 1331 (1933); *In re Equity*
22 *Funding Corp. of Am. Sec. Litig.*, 416 F. Supp. 161, 176 (C.D. Cal. 1976), *Simpao* plaintiffs are
23 nonparties to the *Torres* and *Santos* suits. As such, they lack standing to challenge preliminary
24 approval of the class action settlement agreement reached in the *Santos* and *Torres* actions.
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1 Even if *Simpao* plaintiffs are considered to be parties to the *Santos* and *Torres* suits, they
2 still lack standing to object. Generally, non-settling parties in multiparty cases lack standing to
3 object to preliminary approval of class action settlement agreements as such non-settling parties
4 are not affected by settlement. See *Mayfield v. Barr*, 985 F. 2d 1090, 1092 (D.C. Cir. 1993); *In re*
5 *NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 103 (S.D.N.Y. 1997); *Smith v. Arthur*
6 *Andersen LLP*, 421 F. 3d 989, (9th Cir. 2005). A non-settling party may not object to the terms
7 of a settlement which does not affect its own rights. *Fisher Bros. v. Phelps Dodge Industries,*
8 *Inc.*, Master File No. 82-4921, 1984 WL 3650, at *4 (E.D. Pa. 1984) (on plaintiffs' motion for
9 preliminary approval of class action settlement agreement). In order for a non-settling party to
10 have standing to object, the party must demonstrate he or she will sustain some formal legal
11 prejudice as a result of settlement. *Smith*, 421 F. 3d at 998; *NASDAQ*, 176 F.R.D. at 103. Such
12 prejudice exists where the settlement purports to strip a non-settling party of a legal claim or
13 cause of action. *Smith*, 421 F. 3d at 998; *Mayfield*, 985 F. 2d at 1093. Such prejudice does not
14 exist in the instant case to the *Simpao* plaintiffs.
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17 Approval of the instant Settlement Agreement would not deprive the *Simpao* plaintiffs of
18 a legal claim or cause of action. If the *Simpao* plaintiffs are dissatisfied with the terms of the
19 agreement, they each possess the power to opt out of the class and proceed with their lawsuit.
20 Whatever the *Simpao* plaintiffs' decision may be regarding strategy, they nevertheless lack
21 standing to object to preliminary approval of a Settlement Agreement they relentlessly scheme to
22 undermine, to the detriment of those who need it most, the settlement class members.
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24 **II. SUBJECT MATTER JURISDICTION EXISTS OVER THE SETTLEMENT** 25 **CLASS MEMBERS.**

26 This Court has subject matter jurisdiction over all settlement class members despite the
27 cynical efforts of the *Simpao* plaintiffs to assert meritless technical obstacles designed to prevent
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1 payments to and exclude from the settlement class definition the neediest and most vulnerable
2 citizens entitled to EIC. Subject matter jurisdiction is acknowledged by all but the *Simpao*
3 plaintiffs whose motives for depriving the Court of jurisdiction are not only inconsistent with
4 their varying complaint versions, from their original complaint to their two amended complaints,
5 but are just plain suspicious.

6 The *Simpao* plaintiffs argue that the settlement class members definition is “impermissibly
7 broad.” The settlement class member definition in the Settlement Agreement is intentionally
8 inclusive to ensure that EIC payments are made to the most people consistent with legislative and
9 executive policies and judicial opinion so that the neediest and most deserving people are not
10 excluded because of the technicalities such as those repeatedly argued by the *Simpao* plaintiffs to
11 exclude them. Accordingly, if a person has not filed a tax return or an EIC claim, he or she will
12 still be able to become a settlement class member and benefit from the enhanced benefits
13 contained in the Settlement Agreement. Settlement Agreement § VI(b)(i). Persons needing to
14 amend, correct or file a tax return or an EIC claim are given the opportunity to do so prior to the
15 fairness hearing and final approval procedures. Settlement Agreement § VI(c). Accordingly, all
16 settlement class members are or will be “filers” under the Settlement Agreement. In this way the
17 Settlement Agreement and other goals are advanced: EIC claims will be paid to the most and
18 neediest people, according to expedited procedures. And, the *Simpao* plaintiffs will not be able to
19 argue red herrings such as their relentless claim that some people have failed to exhaust their
20 administrative remedies or are otherwise excludable from EIC benefits.
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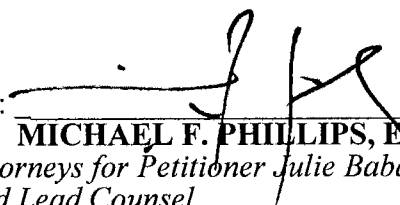
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1 **IV. CONCLUSION**


2 The *Santos* and *Torres* parties respectfully request preliminary approval of the Settlement
3 Agreement be granted, and the processes and procedures outlined in the Settlement Agreement
4 commence.

5 Dated this 22nd day of December, 2006.

6 **PHILLIPS & BORDALLO, P.C.**

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CERTIFICATE OF SERVICE

I, PETER C. PEREZ, ESQ., certified that I caused a copy of the foregoing document here
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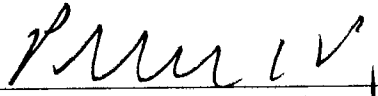
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Respectfully submitted this 22nd day of December, 2006.

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